

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
INDUSTRIAL TELECOMMUNICATIONS)
ASSOCIATION, INC.)
Request to Initiate Proceeding to Revoke or)
Modify the License for Station WPIZ793)
)
PERSONAL COMMUNICATIONS INDUSTRY)
ASSOCIATION, INC.)
Request to Correct License for Station WPIZ793)
)
and)
)
WINGS STADIUM MANAGEMENT)
Licensee of Private Land Mobile Radio Service)
(Industrial/Business Pool Station WPIZ793,)
Kalamazoo, Michigan)

MEMORANDUM OPINION AND ORDER

Adopted: April 14, 2003

Released: April 16, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. For the reasons set forth below, we propose to modify the license of Wings Stadium Management (WSM) for private land mobile radio (PLMR) service Station WPIZ793, Kalamazoo, Michigan. Specifically, we propose to replace the frequency 151.8600 MHz with 151.8650 MHz.

II. BACKGROUND

2. On December 7, 1995, the Commission granted WSM a license, under Call Sign WPIZ793, to operate on two PLMR frequencies in the 150 MHz band. On October 4, 2000, we granted WSM's application to renew this license for a term that expires on December 7, 2005.¹ The license for Station WPIZ793 authorizes WSM to operate twenty mobiles within a 20-km service area radius around a center point in Kalamazoo, Michigan, on two frequencies: 151.8600 MHz and 154.5150 MHz.

3. By letter dated October 3, 2002, the Industrial Telecommunications Association, Inc. (ITA) complained that WSM's license authorizes operation on an "invalid" frequency because 151.8600 MHz is not allocated to either PLMR frequency pool.² Moreover, ITA stated that this mistake is encumbering it

¹ See Call Sign WPIZ793.

² Letter dated October 3, 2002 and received October 9, 2002 from Richard F. Feser, Director, Spectrum Operations & Analysis, ITA, to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division (ITA Request). The PLMR frequency pools are the Industrial/Business Pool and the Public Safety Pool. See 47 C.F.R. §§ 90.20, 90.35.

from certifying applications to operate, at locations near Kalamazoo, on valid frequencies within 15 kHz of 151.8600 MHz.³ Therefore, ITA urged us to determine the correct frequency and issue WSM a new authorization (or revoke WSM's license if a correct frequency cannot be determined).⁴

4. On March 11, 2003, we asked the Personal Communications Industry Association (PCIA) to recommend the most appropriate replacement frequency (because PCIA was the FCC-certified PLMR frequency coordinator used by WSM for its 1995 application).⁵ On March 20, 2003, PCIA responded that its electronic records show that, on October 26, 1995, it recommended and filed WSM's application seeking 151.8650 MHz (not 151.8600) and 154.5150 MHz.⁶ In this connection, PCIA requests that we correct the license for Station WPIZ793 to reflect the following frequencies: 151.8650 MHz and 154.5150 MHz.⁷

III. DISCUSSION

5. Based on the information now before us, it appears that 151.8650 MHz was the frequency intended to be applied-for and licensed. Further, it appears that WSM currently is authorized to operate on 151.8600 MHz due to a typographical error made in 1995 during the application and/or licensing process. In this connection, we note the possibility that WSM is operating on 151.8650 MHz, having never noticed the error on its license, in which case correcting the license to 151.8650 MHz is a ministerial act. However, WSM may be operating on 151.8600 MHz, in which case the process set forth below applies.

6. WSM's authorization on frequency 151.8600 MHz inhibits the licensing and use of valid frequencies and any operation on 151.8600 MHz has the potential to interfere with nearby stations on properly assigned, adjacent frequencies. Moreover, WSM's license for Station WPIZ793 is inconsistent with the Commission's Part 90 rules because 151.8600 MHz is not allotted to the PLMR services.

7. While we agree with ITA's suggestion to replace frequency 151.8600 MHz with a correct frequency, we find that ITA's suggestion to issue a new authorization is unnecessary in the instant case because we have an alternative that follows PCIA's suggestion to modify the license to reflect the intended frequencies. We believe that Section 316(a)(1) of the Communications Act of 1934, as amended, provides the appropriate vehicle for resolving this matter.⁸ Section 316(a) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.⁹ We believe that a modification of the WSM license to simply replace frequency 151.8600 MHz with 151.8650 MHz, without issuing a new authorization is appropriate. If WSM does not protest this proposal, we will issue an Order of Modification to correct the license.

³ See ITA Request at 1.

⁴ *Id.*

⁵ See Letter dated March 11, 2003, from D'wana R. Terry, Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, to Don Andrew, Coordination Services Specialist, PCIA.

⁶ Letter dated March 20, 2003 from Don Andrew, Coordination Services Specialist, PCIA, to Mr. Tom Eng, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (PCIA Request). PCIA states that it does not retain the original records for applications filed in 1995, which were typically filed with the Commission by mail in their original form. *Id.* at 1.

⁷ *Id.* We note that PCIA's Request and ITA's Request are most properly characterized as informal requests for Commission action under Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41.

⁸ 47 U.S.C. § 316(a)(1).

⁹ *Id.*

8. As discussed above, the grant of WSM's license was erroneous because the subject frequency is not allotted to either PLMR frequency pool. Thus, we believe that the proposed modification of WSM's license for Station WPIZ793 to replace frequency 151.8600 MHz with 151.8650 MHz is appropriate to preserve the existing coverage areas of affected parties, prevent harmful interference, and facilitate the licensing and use of other valid PLMR service frequencies in the vicinity of Kalamazoo, Michigan. In accordance with Section 1.87(a) of the Commission's Rules,¹⁰ we will not issue a modification order until WSM has received notice of our proposed action and has had an opportunity to file a protest. To protest the modification, WSM must, within thirty days of the release date of this *Memorandum Opinion and Order*, submit a written statement with sufficient evidence to show that the modification would not be in the public interest. The protest must be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW-A325, Washington, DC 20554.¹¹ If no protest is filed, WSM will have waived its right to protest the modification and will be deemed to have consented to the modification.

IV. CONCLUSION

9. For the reasons stated above, we conclude that the grant of WSM's license was defective to the extent that it authorized operations on frequency 151.8600 MHz. Accordingly, we propose the modification of WSM's license for Station WPIZ793 by replacing frequency 151.8600 MHz with 151.8650 MHz.

V. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, that the request to initiate a proceeding to revoke or modify the license for Station WPIZ793, filed by the Industrial Telecommunications Association, Inc., on October 3, 2002, IS GRANTED to the extent indicated above and IS OTHERWISE DENIED.

11. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, that the request to correct the license for Station WPIZ793, filed by the Personal Communications Industry Association, Inc., on March 20, 2003, IS GRANTED to the extent indicated above and IS OTHERWISE DENIED.

12. IT IS PROPOSED, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 316, and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, that the license of Wings Stadium Management for private land mobile radio service Station WPIZ793, Kalamazoo, Michigan, , BE MODIFIED by replacing frequency 151.8600 MHz with 151.8650 MHz.

¹⁰ 47 C.F.R. § 1.87(a).

¹¹ The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only at our new location at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service, Express Mail, and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. See FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).

13. IT IS FURTHER ORDERED that this *Memorandum Opinion and Order* shall be sent by certified mail, return receipt requested, to Wings Stadium Management, 3600 Van Rick Dr., Kalamazoo, MI 49001, Attn: Mr. Paul Pickard.

14. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau